



employees in its Mid-Atlantic Marketing Assets,<sup>1</sup> Mobil Corporation instituted a severance plan that applied to "Tier 4" employees, such as Plaintiffs.<sup>2</sup> Plaintiffs received a summary plan description of the Mobil Severance Plan in August 1999. The Severance Plan generally provided monetary payments to employees who lost their employment with Mobil Corporation as a result of a change in control of Mobil Corporation. On November 30, 1999, the FTC approved Exxon Corporation's acquisition of Mobil Corporation. Mobil Corporation sold its Mid-Atlantic Marketing Assets to Tosco Marketing Associates ("Tosco") and terminated the employment of the Plaintiffs, who were then employed by Tosco. Two Plaintiffs applied for severance benefits under the Severance Plan. Their applications and subsequent appeals were denied under a provision of the Severance Plan which denied benefits to Tier 4 employees that were offered employment with the acquirer of a divested facility. This provision of the Severance Plan was not included in the Plan Summary provided to Plaintiffs in August 1999, but it was publicized as an errata to the Plan Summary in February 2000.

---

<sup>1</sup> The merger between Exxon Corporation and Mobil Corporation required Federal Trade Commission ("FTC") approval. Plaintiffs allege that, knowing it would need to divest assets, Mobil Corporation knew that it would need to retain employees in order to sell divested divisions.

<sup>2</sup> An employee's tier apparently relates to the employee's salary level.

## DISCUSSION

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, a court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Although Plaintiffs concede that any state law breach of contract claim would be preempted by ERISA, they contend that their claim is for breach of contract under ERISA. A claim for breach of contract can be maintained under ERISA. Amatuzio v. Gandalf Sys., Inc., 994 F. Supp. 253, 265 (D.N.J. 1998). Accordingly, Plaintiffs have adequately pleaded a claim for breach of an ERISA contract.

Both plan summaries and the actual written plan govern the extent of employee benefits under ERISA. In re Unisys Corp. Retiree Med. Ben. ERISA Litig., 58 F.3d 896, 902 (3d Cir. 1995). ERISA provides that "[a] summary plan description of any

employee benefit plan shall be furnished to participants and beneficiaries. . . ." 29 U.S.C. § 1022(a)(1). The plan summary must include certain mandated information and "shall be written in a manner calculated to be understood by the average plan participant." Id. Finally, the plan summary must "be sufficiently accurate and comprehensive to reasonably apprise . . . participants and beneficiaries of their rights and obligations under the plan." Id. Plaintiffs have sufficiently alleged that the Exxon Mobil plan summary did not reveal that Tier 4 employees would not receive severance benefits if their work unit was divested and they were offered employment with the acquirer of their work unit. As a result, Plaintiffs have sufficiently alleged that the plan was ambiguous and further discovery is needed to determine whether Plaintiffs were timely notified of the error in the plan summary.

Finally, Plaintiffs have sufficiently alleged that seeking administrative remedies under the Severance Plan would have been futile. See Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990). Accordingly, the Motion to Dismiss will be denied.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOE A. HOOVEN, et al.,                   :     CIVIL ACTION  
    Plaintiffs,                         :  
  :  
    v.                                     :  
  :  
EXXON MOBIL CORP. and                 :  
MOBIL CORPORATION EMPLOYEE         :  
SEVERANCE PLAN,                       :  
    Defendants.                         :     NO. 00-CV-5071

O R D E R

AND NOW, this            day of July, 2001, upon consideration of  
the Motion of Defendants, Exxon Mobil Corp. and Mobil Corporation  
Employee Severance Plan, to Dismiss Count III of the Plaintiffs'  
Complaint, the Response of Plaintiffs and Defendants' Reply  
thereto, it is ORDERED that the Motion to Dismiss is DENIED.

BY THE COURT:

\_\_\_\_\_  
JAMES MCGIRR KELLY, J.